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**AUG 23 2004**

**OFFICE OF PETITIONS**

In re Application of  
Burgess et al.  
Application No. 10/060,208  
Filed: February 1, 2002  
Attorney Docket Number: CI-  
0026

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DECISION ON PETITION

This is a decision on the "PETITION FOR UNINTENTIONALLY DELAYED CLAIM UNDER 37 C.F.R. 1.78," filed June 8, 2004, to accept an unintentionally delayed claim under 35 U.S.C. 120 for the benefit of priority to prior-filed nonprovisional Application no. 09/960,703.

The petition is granted.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

(1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application(s), unless previously submitted;

(2) the surcharge set forth in § 1.17(t); and

(3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The instant nonprovisional application was filed on February 1, 2002, and was pending at the time of the filing of the instant petition. A reference to the prior-filed nonprovisional application has been included in an amendment to the first


sentence of the specification following the title, as required by 37 CFR 1.78(a)(2)(iii). This amendment was filed with this petition on June 8, 2004. The petition includes payment of the surcharge under § 1.17(t). Petitioner states that the entire delay between the date when the claim was due under 37 C.F.R. 1.78(a)(2) and the date the claim was filed was unintentional.

The instant nonprovisional application was filed after November 29, 2000, and the claim herein for the benefit of priority to the prior-filed nonprovisional application is submitted after expiration of the period specified in 37 CFR 1.78(a)(2)(ii). Also, the reference to the prior-filed application was submitted during the pendency of the instant nonprovisional application. See 35 U.S.C. § 120. Accordingly, having found that the instant petition for acceptance of an unintentionally delayed claim for the benefit of priority under 35 U.S.C. § 120 to the prior-filed nonprovisional application satisfies the conditions of 37 CFR 1.78(a)(3), the petition is granted.

The granting of the petition to accept the delayed benefit claim to the prior-filed application(s) under 37 CFR 1.78(a)(3) should not be construed as meaning that the instant application is entitled to the benefit of the prior-filed application(s). In order for the instant application to be entitled to the benefit of the prior-filed application(s), all other requirements under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (a)(2) must be met. Similarly, the fact that the corrected Filing Receipt accompanying this decision on petition includes the prior-filed application should not be construed as meaning that applicant is entitled to the claim for benefit of priority to the prior-filed applications noted thereon. Accordingly, the examiner will, in due course, consider this benefit claim and determine whether the instant application is entitled to the benefit of the earlier filing date.

This application is being forwarded to Technology Center Art Unit 1744 for consideration by the Examiner of applicant's claim under 35 U.S.C. § 120 and 37 CFR 1.78(a)(1) and (2) for the benefit of priority to the prior-filed nonprovisional application.

Telephone inquiries concerning this matter should be directed to Senior Petitions Attorney Nancy Johnson at (703) 305-0309.

  
Charles A. Pearson  
Director  
Office of Petitions